

In the Matter of JONES & LAUGHLIN STEEL CORPORATION, PITTSBURGH
WORKS, and UNITED STEELWORKERS OF AMERICA (CIO)

Case No. 6-R-905.—Decided July 14, 1944

Messrs. James C. Beech and W. H. Harvey, of Pittsburgh, Pa., for
the Company.

Mr. Philip M. Curran, of Pittsburgh, Pa., for the Union.

Mr. Joseph C. Wells, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America (CIO), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Jones & Laughlin Steel Corporation, Pittsburgh Works, Pittsburgh, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before W. G. Stuart Sherman, Trial Examiner. Said hearing was held at Pittsburgh, Pennsylvania, on May 15, 1944. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, and to file briefs with the Board. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Jones & Laughlin Steel Corporation is a Pennsylvania corporation engaged in the manufacture and sale of steel and steel products. It operates plants located in Pittsburgh, Pennsylvania, Aliquippa, Pennsylvania, and Cleveland, Ohio. During the past year the Company used at its Pittsburgh plants 8,000,000 tons of raw materials, of which approximately 50 percent was shipped from points outside the State of Pennsylvania. During the same period, the Company's Pittsburgh

plants manufactured and sold approximately 2,000,000 tons of steel, of which approximately 75 percent was shipped to points outside the State.

The Company admits, for the purpose of this proceeding, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Steelworkers of America, affiliated with Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain chemists until the Union has been certified by the Board in an appropriate unit.

A statement of the Field Examiner and a certain letter, introduced into evidence at the hearing, indicate that the Union represents a substantial number of the employees here involved.¹

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The Union, by its petition in this proceeding, seeks to be certified as the exclusive bargaining representative of all salaried chemists doing work comparable to that performed by the hourly paid chemists employed by the Company in its chemical laboratory department at the Pittsburgh plants. The Union contends that these salaried chemists should be included in the existing unit of production and maintenance employees in which the hourly paid chemists are represented. There is no dispute as to the Union's status as the exclusive representative of the employees in the existing unit and the Union does not seek an election therein. The Company opposes the enlargement of the existing unit and contends that the petition should be dismissed or, alternatively, that the Board should find appropriate a unit comprised of all salaried employees of the chemical laboratory department of the Pittsburgh plants, excluding supervisory em-

¹ The Field Examiner reported that a Certification of Membership, subscribed and sworn to by the president of the local union, states that 10 of the 13 employees for whom the Union petitions are members of the Union.

The letter is addressed to "The Officers of The Local 1272, of The USA-CIO" and bears apparently genuine signatures of employees who are among the group for whom the Union here petitions. The letter requests the Union to act as the exclusive agent of the signatories to bargain with the Company.

ployees. The Company supports its first contention with an allegation that the salaried chemists petitioned for by the Union are supervisory employees within the Board's usual definition. Its alternative contention is based on arguments that salaried chemists do not perform work comparable to that performed by hourly paid chemists; and that, in the history of collective bargaining between it and the Union and between the Union and other basic steel companies, the traditional units for collective bargaining for production and maintenance employees have excluded salaried employees.

Since 1937 the Union has bargained with the Company on behalf of all employees of the Company, excluding foremen or assistant foremen in charge of any classes of labor, watchmen, and salaried employees. In 1942 the parties added nurses to the exclusions.² The National War Labor Board by Directive Order of December 27, 1943, extended the terms and conditions of the 1942 agreement.³

For convenience we will classify the chemists employed by the Company in its chemical laboratory department at the Pittsburgh plants into four groups designated as hourly paid chemists, salaried chemists, special salaried chemists, and supervisory chemists.

Hourly Paid Chemists. Approximately 30 hourly paid chemists, who are included in the existing unit of production and maintenance employees, analyze steel during the manufacturing process for contaminating agents. Their work is considered routine, and all chemists employed in the department are capable of performing their duties. Of the ordinary analyses made by the chemical laboratory department during the manufacturing process, these chemists perform all but those for sulphur and carbon. Entrance qualifications for these positions do not necessarily include technical training. There is no dispute between the parties as to the status of these chemists, who are now presented by the Union.

Salaried Chemists. Twelve chemists spend about 78 percent of their time in the performance of duties identical to those performed by the hourly paid chemists. The remainder of their time is spent in making analyses for sulphur and carbon, and performing other miscellaneous tests. These chemists work in the same laboratories and coordinate their work with the hourly paid chemists. The chemists in this group are recruited from among the hourly paid chemists and receive approximately 25 percent more pay than the hourly paid chemists. A company witness testified to the effect that turn foremen are recruited

²At the hearing, a company witness testified to the effect that the parties agreed to exclude nurses, although they were hourly paid, on the ground that they were not properly covered by the production and maintenance workers' contract.

³The Company contends that this Directive Order acts as a bar to a present determination of a question of representation. We find no merit in this contention, since no investigation or determination of representatives affecting employees covered by the 1942 agreement is involved in this proceeding.

from this group. Some of these chemists substitute for the turn foremen who are off duty every seventh day. There is no set plan by which substitute foremen are assigned. It appears that some of the group have never received the assignment while others have on several occasions. These are the chemists whom the Union would include, by this proceeding, in the existing production and maintenance unit.⁴

Special Salaried Chemists. Five salaried chemists perform duties such as analyses of special alloys, ferro alloys; and electrical furnace steels. It appears that a relatively small percentage of their time is spent in the performance of the routine duties performed by the other chemists. They receive from 10 to 40 dollars more pay per month than the other salaried chemists. They do not substitute as foremen, and are recruited from either the other salaried chemists or general applicants who possess the requisite skill or technical knowledge. Two of these chemists have the technical education required of professional chemists, and the other three are chemists whose training was acquired by practical experience in the industry. The Union does not seek to represent these chemists.

Supervisory Chemists. Approximately 11 chemists clearly are supervisory employees.

In addition to the chemists described above, the chemical laboratory department employs two persons, paid on a salary basis, whose duties are entirely clerical.

Inasmuch as it appears that only some of the salaried chemists direct the work of other chemists, and then only in a substitute capacity on irregular occasions, we find that the 12 salaried chemists, for whom the Union here petitions, are not supervisory employees within our usual definition.⁵ Furthermore, since these 12 salaried chemists spend at least 78 percent of their time in the performance of duties which are an integral part of the production process; are subject to the same supervisory control as the hourly paid chemists who are undisputedly production workers, and work alongside and in cooperation with the hourly paid chemists,⁶ we are of the opinion that they may properly form a part of the existing unit in which the hourly paid chemists are represented, if they so desire.

In regard to the Company's contention that salaried employees should not be included in the same unit with hourly paid employees because of the history of collective bargaining between the Union and basic steel companies, we have stated frequently that for the purpose of determining appropriate bargaining units we will not distinguish

⁴ At the hearing these chemists were identified as John J. Barrett, Harry Eckhardt, A. J. Haller, E. Lauer, Arthur McKay, Harry F. Murgauagh, P. C. Röss, W. J. Sauer, Harry F. Schultz, W. J. Spokane, F. Steirhein, and Edward Yeager.

⁵ See *Matter of Dixie Greyhound Lines, Inc.*, 52 N. L. R. B. 424.

⁶ These considerations clearly do not apply to the five special salaried chemists and the two salaried clerical employees of the chemical laboratory department

between employees paid on a salary basis and those paid on an hourly basis solely on the ground of the difference in mode of payment;⁷ and, although the history of collective bargaining in the industry is a factor which we have here considered, we can perceive nothing in the facts presented in this case to warrant a deviation from our usual policy.

In accordance with the foregoing considerations, we shall direct an election among the salaried chemists for whom the Union petitions in this proceeding to determine whether or not they wish to be represented by the Union. In the event that a majority of their number select the Union as their collective bargaining representative, they will have indicated their desire to be part of the appropriate unit presently represented by the Union, and will be part of such unit.

Accordingly we shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the salaried chemists, excluding the supervisory chemists and special salaried chemists, who were employed by the Company at its Pittsburgh plants during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Jones & Laughlin Steel Corporation, Pittsburgh, Pennsylvania, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Thirteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the salaried chemists, excluding the special salaried chemists and supervisory chemists, in the Company's employ at the Pittsburgh plants who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person

⁷ See *Matter of American Radiator Company*, 7 N. L. R. B. 542; *Matter of Inland Steel Company*, 9 N. L. R. B. 783; *Matter of General Motors Corporation*, 27 N. L. R. B. 1196; *Matter of Bendix Aviation, Ltd.*, 52 N. L. R. B. 1182; *Matter of Edgewater Steel Company*, 56 N. L. R. B. 1778.

at the polls, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by United Steelworkers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.